

**OPINION
56-139**

June 12, 1956(OPINION)

WORKMEN'S COMPENSATION

RE: Award to Heirs of Deceased Employee

This is in reply to your letter asking for an opinion or interpretation of chapter 40-45 as pertaining to sections and 40-4517.

The facts to be taken into consideration on the interpretation of these sections are in substance that a policeman of the city in course of employment sustained an injury resulting in his death, leaving a widow and minor children. Application for benefits under the Workmen's Compensation Act was filed and awards were made to the widow and children.

Your specific question is whether or not under section 40-4517 the benefits are reduced in an amount equal to the benefits received from the Workmen's Compensation Fund.

The question at hand deals with a creative right conferred by statute and is not one of common law. As to what rights are created or conferred we must resort to the specific statute or statutes and analyze and interpret the language of such statute. The language of 40-4517, as created by chapter 208, S.L. 1941, is in substance as follows:

"Provided further, that where any beneficiary, under a retirement system established under the provisions of this Act, shall be retired by reason of physical or mental disability and shall by reason thereof be entitled to benefits or awards under the provisions of the Workmen's Compensation Law . . . the benefits or awards to which such beneficiary would be entitled under the provisions of the retirement plan herein provided for, shall be decreased in an amount equal to those received under the Workmen's Compensation Act." (Emphasis supplied)

The term "beneficiary" generally has a very broad meaning. However, in this section the term "beneficiary", as qualified by the following language "shall be retired by reason of physical or mental disability language "shall be retired by reason of physical or mental disability and shall by reason thereof be entitled to benefits or awards under the provisions of the Workmen's Compensation Act . . . such beneficiary". . . , means and refers to the policeman himself and not to his widow or children. While it is true that under unusual circumstances this term may apply to the widow or child, but only where a widow or child suffered a physical or mental disability and be reason thereof is entitled to workmen's compensation benefits that the benefits under the police retirement plan would be reduced accordingly, it is doubtful that the Legislature had in mind to provide for such unusual condition. The doubt is further affirmed by the language "shall be retired" which in our opinion again refers to the policeman. The facts as submitted do not reveal that the widow or minor children have such disability.

It is also noted that the section refers to physical or mental disability but does not use the term "death" which lends considerable credence to our interpretation and the meaning of the word "beneficiary" in section 40-4517.

In examining chapter 208 of the 1941 S.L., through which section 40-4517 was put into law, we find another provision, which is section 40-45-18. The significant language in this latter section is ". . . In such event, the benefits received under and by virtue of any retirement plan established under the provisions of this chapter shall be reduced by the benefits received under the Federal Social Security Act."

It is to be noted that in comparing the language of 40-4517 with 40-4518, both of which were passed in the 1941 session, the latter specifically provides that the benefits received under the Police Pension Plan shall be reduced by benefits received under the Federal Social Security Act. This language or similar language is not found in 40-45-17 pertaining to workmen's compensation benefits. It is also noted that section 40-45-13 in substance provides for payment out of the pension fund to certain classes of people subject to the restriction contained in 40-45-15 which defines widow and children. This section was amended in 1953 after the passage of section 40-45-17 and it is our thought that if the Legislature had intended to reduce the benefits under the Police Retirement Plan in an amount equal to the benefits received from the Workmen's Compensation Fund it would have employed similar language either in this section or in section 40-4517.

It is to be noted that no mention is made in section 40-4513 restricting or modifying the benefits pursuant to some other provisions in the Act.

It is therefore my opinion that the term "beneficiary" as qualified in the provisions of 40-4517 refers to an individual who by virtue of his physical or mental disability receives benefits under the Workmen's Compensation Fund and also under the Police Pension Fund and which benefits shall be reduced by an amount equal to the benefits received under the Workmen's Compensation Act. From the information in your letter the widow and minor children do not come within that provision. Therefore, the benefits received by the widow and minor children from the Workmen's Compensation Fund are not to be taken into consideration to decrease or reduce the benefits received under the Police Pension Fund in chapter 40-45.

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